HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.721 of 2007

Between:

M. Pandu

… Appellant

And

Potti Sree Ramulu Telugu University,
Rep. by its Registrar, Hyderabad and others

… Respondents

Counsel for the appellant:

::JUDGMENT::

September 10, 2007

Per G.S. Singhvi, CJ

Whether an employee can, after more than two decades of joining the service, seek change in his recorded date of birth is the question which arises for determination in this appeal filed by Shri M. Pandu against order dated 16.3.2007 passed by the learned Single Judge in Writ Petition No.21428 of 2005.

On being sponsored by the Employment Exchange, the

appellant was selected for appointment on the post of Roneo Operator in Potti Sree Ramulu University (for short, 'the University'). He joined the service in 1979. His date of birth, as recorded in the papers forwarded by the Employment Exchange, was 08.3.1949. The same was also entered in the Service Book, which was duly signed by the appellant. After 20 years, the appellant made an application to Mandal Revenue Officer, Tandur, Ranga Reddy District (respondent No.3 herein) for issue of Nativity, Community and Date of Birth Certificate. The appellant's parents appeared before respondent No.3 and gave out that his date of birth is 07.6.1954. Respondent No.3 accepted the application and issued the required certificate showing the appellant's date of birth as 07.6.1954. Thereafter, the appellant passed Secondary School examination and obtained certificate showing his date of birth as 07.6.1954.

Armed with the above mentioned certificates, the appellant made representations dated 05.2.2004 and 21.8.2004 for change of his recorded date of birth. The University referred the matter to the State Government for consideration in accordance with the rules framed vide G.O.Ms.No.165, dated 21.4.1984. The latter declined the appellant's request apparently because the application was made after 25 years. As a sequel to this, the University vide its letter dated 18.8.2005 informed the appellant that his request for change of recorded date of birth cannot be accepted.

The appellant challenged the decision of the University in Writ Petition No.21428 of 2005, which was dismissed by the learned Single Judge by recording the following observations:

> "At the time of joining, the date of birth of the petitioner, admittedly, was entered in the service records as 08.03.1949. Though the petitioner contends that his date of birth was wrongly entered in the service records, the fact remains, he has not raised

any objection as to the wrong entry immediately after joining the service, but he sought correction of his date of birth after lapse of 20 years, and that too based on the Community, Nativity and Date of Birth Certificate, issued by the 3rd respondent-Mandal Revenue Officer. Though the petitioner contends that the Community, Nativity and Date of Birth Certificate, issued by the 3rd respondent-Mandal Revenue Officer, cannot be doubted, in that it was issued after elaborate enquiry, it is the case of the 1st and 2nd respondents that the 3rd respondent-Mandal Revenue Officer, has no authority to determine the date of birth of the petitioner.

Be that as it may, a perusal of the Community, Nativity and Date of Birth Certificate, issued by the 3rd respondent-Mandal Revenue Officer, shows that it was not issued on the strength of any school records or date of birth certificate, but on the strength of the declaration of the petitioner and his parents. Since the petitioner and his parents declared that the petitioner's date of birth is 07.06.1954, the 3rd respondent-Mandal Revenue Officer, issued Community, Nativity and Date of Birth Certificate, reflecting the date of birth of the petitioner as 07.06.1954. The petitioner having obtained the Community, Nativity and Date of Birth Certificate, admittedly, appeared for SSC examination, and since the petitioner in the application submitted by him for appearing SSC examination, mentioned his date of birth as reflected in the Community, Nativity and Date of Birth Certificate, the SSC Certificate reflected the date of birth of the petitioner as 07.06.1954. Inasmuch as the date of birth of the petitioner, as reflected in the Community, Nativity and Date of Birth Certificate, issued by the 3rd respondent-Mandal Revenue Officer, is based on his and his parents declaration, no credence can be placed thereon, and as a consequence thereof, the date of birth as reflected in the SSC certificate, also cannot be relief, for it was entered therein on the strength of the Community, Nativity and Date of Birth Certificate, issued by the 3rd respondent-Mandal Revenue Officer."

Shri Satish Deshpande argued that the order under challenge is liable to be set aside because while declining the appellant's prayer to quash the decision of the University in the matter of change of his date of birth, the learned Single Judge did not give due

importance to the certificate issued by respondent No.3, who is the competent authority under 'the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993' and the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community, Nativity and Date of Birth Certificates Rules, 1997. Learned counsel further argued that the certificate issued by respondent No.3 is conclusive of the appellant's date of birth and the University committed a serious illegality by refusing to change the date of birth recorded in the Service Book from 8.3.1949 to 7.6.1954. Another argument of the learned counsel is that the State Government does not have any role to play in the matter of correction of the date of birth of the University employee and, therefore, the decision contained in letter dated 18.8.2005 is liable to be declared nullity.

In our opinion, there is no merit in the argument/ submission of the learned counsel and the appeal is liable to be dismissed summarily. The appellant has neither controverted the unequivocal assertion contained in the affidavit filed on behalf of the University that in the papers sent by the Employment Exchange, his date of birth was shown as 08.3.1949, that the same was recorded in his Service Book and that he had signed the Service Book. It is also not in dispute that the appellant made representations for change of recorded date of birth after 25 years of joining the service. In the affidavit filed by him, the appellant relied on the Community, Nativity and Date of Birth Certificate issued by respondent No.3 in 2001 and Secondary School Certificate dated 30.4.2001 issued by the Board of Secondary Education, Andhra Pradesh. However, he did not offer any explanation for the delay of 20 years between his joining the

service and making of application to respondent No.3. He also did not explain the delay of almost three years which occurred between the date of obtaining the two certificates and making of representations to the University for change of the recorded date of birth. Learned counsel for the appellant also failed to explain as to why the appellant signed the date of birth recorded on the basis of the documents forwarded by the Employment Exchange and why he waited for a period of 20 years for making application to respondent No.3 for issue of Nativity Community and Date of Birth Certificate. In our considered view, the appellant's silence for 20 years militates against the bona fides of his claim that his actual date of birth is 07.6.1954 and the one recorded in the Service Book i.e. 08.3.1949 is not the correct date of birth. Even if the one year's period spent by the appellant in securing Nativity, Community and Date of Birth Certificate is excluded from the total span of delay, it is not possible to ignore the long time gap of 20 years between the date on which the appellant joined service and the date on which he approached respondent No.3 for grant of certificate.

In view of the above, we hold that the University did not commit any illegality by declining to entertain the appellant's request for change of the recorded date of birth and the fact that the application of the appellant was referred by the University to the State Government is inconsequential.

In **Union of India v. Saroj Bala**[1], the Supreme Court reversed an order passed by the Central Administrative Tribunal for correction of date of birth of the respondent by observing that 18½ years delay in the making of application cannot be overlooked.

In **Union of India v. C. Rama Swamy**[2], the Supreme Court

considered the issue relating to change of the recorded date of birth and held:

> "In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.
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> In such a case, even in the absence of a statutory rule like Rule 16-A, the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable and relief of change of date of birth can be legitimately denied."

In **State of U.P. v. Shiv Narain Upadhyaya**[3], the Supreme Court noted that most of the States have framed statutory rules or issued administrative instructions to deal with the claims made by the

employees for correction of date of birth and observed:

> "As such, unless a clear case on the basis of clinching materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book."

In **State of Gujarat v. Vali Mohd. Dosabhai Sindhi**[4], the Supreme Court referred to large number of judicial precedents on the subject and held:

> "An application for correction of the date of birth should not be dealt with by the courts, the Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be

> conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant to prove about the wrong recording of his date of birth in his service book."

By applying the ratio of the above noted propositions, we hold that the appellant has miserably failed to make out a case for issue of a direction to the University to change his recorded date of birth.

We also agree with the learned Single Judge that the Nativity, Community and Date of Birth certificate issued by respondent No.3 showing the appellant's date of birth as 07.6.1954 and the Secondary School Certificate obtained by him were rightly not entertained by the State Government and the University because the appellant did not produce any contemporaneous evidence to show that his actual date of birth is 07.6.1954 and not 08.3.1949. The two certificates produced by him were entirely based on the self-serving statement made by his parents. Therefore, the same cannot be relied for issue of a direction to the respondents to effect change in his recorded date of birth.

There is another reason for our disinclination to entertain the appellant's claim. The question whether the appellant's correct date of birth is 8.3.1949 or 7.6.1954 and whether the date of birth recorded

in the papers forwarded by the Employment Exchange to the University is incorrect can be decided by an appropriate adjudicatory forum i.e. civil court after giving opportunity to the parties to lead evidence and there is no extraordinary reason for the High Court to undertake that exercise in a petition filed under Article 226 of the Constitution of India.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.1445 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

10 September , 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] (1996) 2 SCC 81

[2] (1997) 4 SCC 647

[3] (2005) 6 SCC 49

[4] (2006) 6 SCC 537